

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

FLOYD BRUCE,

Petitioner

v.

PAUL JENNINGS, ET AL.,

Respondents

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CIVIL NO. 4:CV-05-1940

(Judge McClure)

ORDER

October 14, 2005

Background

Floyd Murray Bruce, a/k/a Murray Floyd Bruce, a/k/a Joseph Nnandi Ekwensi, a/k/a Michael Olusegun Oduyoye (“Petitioner”), filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 regarding his present detention at the Lackawanna County Prison, Scranton, Pennsylvania. Named as Respondents are Warden Paul Jennings of the Lackawanna County Prison; the Bureau of Immigration and Customs Enforcement (“ICE”); ICE Field Office Director Thomas Decker; and Secretary Michael Chertoff of the Department of Homeland Security. The petition is accompanied by an in forma pauperis application.

Petitioner states that he is 41 years old and was born in Hamilton, Bermuda.

Bruce adds that he was detained by immigration officials upon entering the United States in 1989. An Immigration Judge ordered his exclusion from this country in 1990. However, during 1993 the Petitioner was granted his release on supervision. He was subsequently convicted of "a violation of a Federal Bank Statute" in the United States District Court for the Western District of Ohio. Record document no. 1, ¶ 19. Upon completing service of his federal sentence, Petitioner was taken into ICE custody and the prior order of exclusion was reinstated. See id. at ¶ 20.

Bruce states that he has been in custody of the ICE since October 15, 2004. His present petition challenges "his prolonged detention pending deportation." Id. at ¶ 31. As relief, Petitioner seeks his release on supervision pending deportation.

Discussion

Habeas corpus petitions brought under § 2241 are subject to summary dismissal pursuant to Rule 4 ("Preliminary Consideration by the Judge") of the Rules Governing Section 2254 Cases in the United States District Courts, 28 U.S.C. foll. § 2254 (1977) (applicable to § 2241 petitions under Rule 1(b)). See, e.g., Patton v. Fenton, 491 F. Supp. 156, 158-59 (M.D. Pa. 1979).

Rule 4 provides in pertinent part: "If it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court, the judge shall make an order for its summary dismissal and cause the

petitioner to be notified." A petition may be dismissed without review of an answer "when the petition is frivolous, or obviously lacking in merit, or where . . . the necessary facts can be determined from the petition itself" Allen v. Perini, 424 F.2d 134, 141 (6th Cir.), cert. denied, 400 U.S. 906 (1970). Accord Love v. Butler, 952 F.2d 10, 15 (1st Cir. 1991). The Allen court also stated that "the District Court has a duty to screen out a habeas corpus petition which should be dismissed for lack of merit on its face." 424 F.2d at 141.

Attached to Bruce's petition are various supporting documents. One of those submissions is a copy of an August 17, 2005 grand jury indictment from this district court, United States v. Bruce, Criminal No. 3:05-CR- 318 (Vanaskie, J.). See id. at Exhibit Q,

A review of the record from Petitioner's ongoing federal criminal prosecution provides that Magistrate Judge Thomas Blewitt issued an Order of Detention Pending Trial on August 31, 2005. See Bruce, Criminal No. 3:CV-05-CR- 318, record document no. 14. Pursuant to Magistrate Judge Blewitt's Order, the Petitioner shall be detained in a correctional facility pending trial in his criminal case.

The Petitioner is not presently in ICE custody. As noted above, Bruce has been placed in pre-trial detention pending the outcome of his ongoing federal criminal prosecution. Thus, his present petition seeking release on supervision from ICE

custody pending deportation is clearly premature and will be dismissed without prejudice. Consequently,

IT IS HEREBY ORDERED THAT:

1. The petition for writ of habeas corpus is dismissed without prejudice as premature.
2. The Clerk of Court is directed to close this case.
3. There is no basis for the issuance of a certificate of appealability.

s/ James F. McClure, Jr.
James F. McClure, Jr.
United States District Judge